

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-129695-15

Date:

September 25, 2015

Legend

Decedent	=
Decedent's Estate	=
Trust	=
Law Firm	=
Date 1	=
Date 2	=
Year	=

Dear :

This letter responds to your authorized representative's letter dated July 13, 2015, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's GST exemption to a transfer to a trust.

Facts

The facts and representations submitted are summarized as follows. On Date 1, Decedent established Trust, an irrevocable trust, for the benefit of Spouse and Grantor's descendants. Decedent transferred stock to Trust on Date 2. Date 2 is in Year, a year prior to December 31, 2000.

Decedent failed to file a timely Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return to report the Date 2 transfer because Decedent believed that his accountants, who prepared his income tax returns, would prepare the Form 709. Upon the discovery that the Form 709 was not prepared by the accountants, Decedent engaged a law firm to prepare and file the Form 709 to report the Date 2 transfer to Trust. However, the return preparer failed to allocate Decedent's

GST exemption to the Date 2 transfer. The failure to allocate Decedent's GST exemption was discovered by Law Firm when reviewing Decedent's Form 706, United States Estate Tax and (Generation-Skipping Transfer) Tax Return.

It is represented that no additions (constructive or actual) were made to Trust after Date 2 and that Decedent has sufficient GST exemption to allocate to the Date 2 transfer.

You request an extension of time pursuant to § 2642(g) and § 301.9100-3 to allocate Decedent's GST exemption to the Date 2 transfer to Trust, that the GST exemption allocated to the Date 2 transfer will be effective as of the date of the transfer, and that the value of the property transferred for purposes of chapter 12 will determine the amount of GST exemption to be allocated.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax imposed by § 2601 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the term "applicable rate," with respect to any GST transfer, as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that the inclusion ratio with respect to any property transferred in a generation-skipping transfer is the excess (if any) of 1 over the "applicable fraction." Under § 2642(a)(2), the applicable fraction is defined as a fraction the numerator of which is the amount of the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust (or involved in the direct skip), reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 2631(a), as in effect for Year, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date

prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(4) of the Generation-Skipping Transfer Tax Regulations provides, in part, that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in part, that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)) and such allocation will be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides, in part, that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extension of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Decedent's estate is granted an extension of time of 120 days from the date of this letter to allocate Decedent's available GST exemption to the Date 2 transfer to Trust. The allocation will be effective as of the date of the transfer to Trust and the value of the transfer to Trust as determined for federal gift tax purposes will be used in determining the amount of Decedent's GST exemption to be allocated to Trust.

This allocation should be made on a supplemental Form 709 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Lorraine E. Gardner
Senior Counsel, Branch 4
(Passthroughs & Special Industries)

Enclosures (2)

Copy for section 6110 purposes

Copy of this letter

cc: